

IP 99-0140-CR 3 B/F USA v Wells [2]
Magistrate Kennard P. Foster

Signed on 3/20/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

JOHN WELLS,)

Defendant.)

Cause No. IP 99-140-CR-03 (B/F)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 99-140-CR-03 (B/F)
)	
JOHN WELLS,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on December 6, 2005, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on December 5, 2005, and to submit to Judge Barker proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e).

Proceedings were held on February 7, 2006 and March 20, 2006 in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. At all proceedings, Mr. Wells appeared in person with his appointed counsel, James McKinley, Office of the Indiana Federal Community Defender; the government appeared by Barry Glickman, Assistant United States Attorney; and U. S. Parole and Probation appeared by Chris Dougherty, U. S. Parole and Probation officer, who participated in the proceedings.

On February 7, 2006, the Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. James McKinley, Office of Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Wells in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Wells and his counsel who informed the Court that they had read and understood the specification of violations and waived further reading thereof.

3. Mr. Wells was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. Mr. Wells would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Wells had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. If the preliminary hearing resulted in a finding of probable cause that Mr. Wells had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on December 6, 2005.

7. Mr. McKinley stated that John Wells would stipulate there is a basis in fact to hold him on the specifications of violation of supervised release set forth in the Petition. Mr. McKinley executed a written waiver of the preliminary examination, which was accepted by the Court.

8. The parties agreed to continue further proceedings until April 11, 2006. The proceedings were then adjourned pending the revocation hearing on April 11, 2006. The defendant was detained, pending further proceedings.

9. At a later date, the April 11, 2006 was vacated and the revocation hearing was rescheduled for March 20, 2006.

On March 20, 2006, the Court reviewed prior proceedings held February 7, 2006, including defendant's right to a preliminary hearing. Mr. Wells appeared in person with his court-appointed counsel, James McKinley. The government appeared by Barry Glickman, Assistant United States Attorney; and Chris Dougherty, U. S. Parole and Probation officer, appeared and participated in the proceedings. The following proceedings occurred:

1. Mr. Wells, by counsel, stated that pursuant to stipulation with the government, he will admit that part of specification 1, that he committed the offense of Resisting Law Enforcement (D felony). Upon that admission, the government agreed to dismiss references to any other offenses other than resisting law enforcement and will dismiss specifications 2 and 3. The defendant admitted he committed the following specifications of violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on December 5, 2005 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	“The defendant shall not commit another federal, state, or local crime.” On November 16, 2005, the defendant was arrested by officers of the Indianapolis Police Department and charged with Resisting Law Enforcement, D-felony. According to the police report, on the above date, the defendant was stopped in the 3300 block of Chester Avenue due to a very large crack running the length of the windshield of the car was driving, a 1993 gold Chevy Caprice. IPD Officer Scott

Wolfe wrote a citation for the vehicle and as he was handing it to the defendant, he informed him he would have to tow the vehicle due to the obstructed view of the windshield and the danger it created. The defendant reached for the gearshift and put the car in drive as Officer Wolfe yelled “stop the car”. Mr. Wells then fled the scene at a very high rate of speed. As the defendant continued to flee in the vehicle, several officers pursued him at speeds of up to 80 m.p.h. Mr. Wells was driving into oncoming traffic and caused Officer Wolfe to take evasive maneuvers which caused his vehicle to hit a utility pole resulting in a great amount of damage to the vehicle and serious injury to Officer Wolfe, who had to be transported to the hospital. The defendant continued driving for several blocks and struck several civilian vehicles near 16th and Sherman Drive, where he then fled on foot. He was apprehended at gunpoint while running near 1505 N. Sherman Drive. When asked why he ran, Mr. Wells stated he was on Federal Probation and did not want to go to jail. When the defendant’s car was searched, police located a digital scale and plastic baggies with alleged drug residue on them.

The parties stipulated the following in open Court:

(1) Mr. Wells and the government agreed they were ready to proceed to disposition on the pending Petition to REVOKE Mr. Wells’ supervised release in open Court this date.

(2) Mr. Wells admitted that he committed the violation of specifications set forth in the Petition to Revoke Supervised Release stated above.

(3) Mr. Wells has a relevant criminal history category of I. *See*, U.S.S.G. §7B1.4(a).

(4) The most serious grade of violation committed by Mr. Wells constitutes a Grade A violation, pursuant to U.S.S.G. §7B1.1(b).

(5) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Mr. Wells is 12 to 18 months.

(6) The parties agree that the appropriate disposition of the case would be revocation of Mr. Wells’ supervised release and that he be sentenced to the custody of the Attorney

General or his designee for a period of 16 months. Further, upon release from confinement, Mr. Smith will not be subject to supervised release.

The Magistrate Judge informed the defendant and the parties' respective counsel that the Magistrate Judge would accept the parties' stipulations.

The Magistrate Judge recommends that Mr. Wells be designated to the United States Prison located in Terre Haute, Indiana.

2. The Court then placed Mr. Wells under oath and inquired directly of him whether he admitted committing the violation of supervised release contained in the Petition. Mr. Wells admitted the violation.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, John Wells, violated the above-delineated conditions in the Petition.

Mr. Wells' supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of 16 months. The service of the sentence shall begin immediately. At the conclusion of Mr. Wells' term of confinement, he will not be subject to supervised release. The Magistrate Judge recommends Mr. Wells be designed to the United States Penitentiary at Terre Haute, Indiana.

The Magistrate Judge requests that Chris Dougherty, U. S. Parole and Probation officer, prepare for submission to the Honorable Sarah Evans Barker, District Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Wells stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;

2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Wells' supervised release and imposing a sentence of imprisonment of 16 months in the custody of the Attorney General or his designee. It is recommended that Mr. Wells be designated by the Bureau of Prisons at the United States Penitentiary at Terre Haute, Indiana. Further, that upon Mr. Smith's release from confinement, he will not be subject to a term of supervised release.

IT IS SO RECOMMENDED this 20th day of March, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court

Distribution:

Barry Glickman,
Assistant United States Attorney
10 West Market Street, #2100
Indianapolis, IN 46204

James McKinley,
Office of Indiana Federal Community Defender
111 Monument Circle, #752
Indianapolis, IN 46204

U. S. Parole and Probation

U. S. Marshal Service